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August 16, 2010

_____/Manette Dennis/
Manette Dennis (Reg. No. 30,623)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/552,525 Confirmation No. : 4420

First Named Applicant: Katsu Kondo Customer No. : 44702

371(c) Date: October 11, 2005 Art Unit: 1794

Docket No. : KPO-SUN-P4/SN-89/US Examiner: Vera Stulii

Title: PROCESS FOR PRODUCING FOOD AND BEVERAGE PRODUCTS FROM
MALT SPROUTS (as amended twice: formerly Process for Producing Food or Drink
from Malt Root)

REQUEST FOR WITHDRAWAL OF FINALITY

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Final Office Action mailed on February 22, 2010, the Advisory Action mailed on August 10, 2010, the teleconference with the Examiner on August 11, 2010 and the voice message left by the Examiner on August 16, 2010, applicants respectfully request that the finality of the subject Office Action should be withdrawn because the Examiner improperly relied on the entire Todorova et al reference without providing a translation of said reference in contravention of MPEP § 706.02 II.

In support of this request, Applicants state the following:

1. In the response to the Final Office Action filed July 21, 2010, applicants presented arguments that were directed to the English language abstract of the Todorova et al. reference, since only a translation of the abstract was provided to applicants.
2. In response, the Examiner issued an Advisory Action mailed August 10, 2010 that made it clear that she relied on the entire Todorova et al reference, written in Bulgarian, and not just the English language Abstract.
3. The undersigned call the Supervisory Examiner, Keith Hendricks, on August 10, 2010 and they discussed how it was incorrect for the examiner to rely on the entire article if a translation of the entire article was not provided. Mr. Hendricks stated he would discuss the situation with Examiner Stulii.
4. Examiner Vera Stulii, called the undersigned on August 11, 2010 and indicated that she would request a full translation and also withdraw the final rejection once she received the translation. The undersigned noted in response, that the final action must be withdrawn now in order to avoid the 6-month deadline of August 22, 2010. Ms. Stulii responded that she would consult with her Supervisory Examiner.
5. Today, the undersigned left a telephone message for Examiner Stulii requesting an update. Examiner Stulii left a message in return stating that she would withdraw the Final Office Action if the translation was received by August 20, 2010. If the translation is not received by that date, she suggested the Applicants file a Notice of Appeal or Request for Continued Examination (RCE) in order to keep the case pending.
6. Applicants were not provided any idea how long it would take for the translation to be received, so a Notice of Appeal may not provide enough time. Applicants should not have to incur the cost of the third month extension plus the filing fee for a Request for Continued Examination in the situation where a full translation was not provided by the Examiner but relied on by the Examiner.

7. This situation could be addressed in many ways, for example, issuing a non-final office action based on the full Todorova et al reference, since Examiner Stulii can read Bulgarian as she states in the Advisory Action. This office action could then be remailed whenever the full translation is received.

In view of the foregoing, Applicants respectfully request withdrawal of the finality of the July 21, 2010 Office Action.

Respectfully submitted,

Date: August 16, 2010

/Manette Dennis/
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